

Dated: April 23, 2016



Brenda Moody

Brenda Moody Whinery, Bankruptcy Judge



Davis Miles

McGuire Gardner

40 E. Rio Salado Pkwy., Suite 425
 Tempe, AZ 85281
 Telephone: (480) 733-6800
 Fax: (480) 733-3748
 efile.dockets@davismiles.com

Pernell W. McGuire – SBN 015909
 M. Preston Gardner – SBN 029868
 Attorneys for Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF ARIZONA**

In re:

CURTIS E. SHELDON and TANISHA R. SHELDON,

Debtors.

CURTIS E. SHELDON and TANISHA R. SHELDON,

Movants,

vs.

DITECH FINANCIAL, LLC fka GREEN
 TREE SERVICING, LLC; THE BANK OF
 NEW YORK MELLON, fka The Bank of
 New York, as successor to JPMorgan
 Chase Bank, N.A. as Indenture Trustee, on
 behalf of the holders of the Terwin
 Mortgage Trust 2006-4SL, Asset-Backed
 Securities, Series 2006-4SL;
 SPECIALIZED LOAN SERVICING,

Respondents.

In Chapter 11 Proceedings

Case No.: 4:15-bk-11675-BMW

**ORDER GRANTING MOTION TO
 VALUE REAL PROPERTY AND
 AVOIDING JUNIOR LIENS**

Property Address:

3144 E. Waterview Dr.
 Chandler, AZ 85249

Curtis E. Sheldon and Tanisha R. Sheldon (the “Debtors”) having filed a Motion to Value Real Property and to Modify Secured Claims and Avoid Junior Liens (the “Motion”) regarding real property located at 3144 E. Waterview Drive, Chandler, AZ 85249 (the

1 “Property”); and the Motion establishing the Debtors’ interest in the Property and respective
2 liens of creditors in the Property as follows:

3 Debtors’ interest in the Property is subject to the first mortgage of Ditech Financial,
4 LLC fka Green Tree Servicing, LLC (“Ditech”) in the estimated amount of \$337,523.00.
5 Ditech’s first mortgage is evidenced by a Deed of Trust in favor of Best Rate Funding
6 Corp., recorded with the Maricopa County Recorder as document no. 2005-1772570, and
7 later transferred to Ditech based on the assignment recorded as document no. 2015-0687690
8 on September 24, 2015.
9

10 Debtors’ interest in the Property is also subject to the second mortgage of The Bank
11 of New York Mellon, fka The Bank of New York, as successor to JPMorgan Chase Bank,
12 N.A. as Indenture Trustee, on behalf of the holders of the Terwin Mortgage Trust 2006-4SL,
13 Asset-Backed Securities, Series 2006-4SL (“NY Mellon”) in the estimated amount of
14 \$88,022.00. The second mortgage of NY Mellon is evidenced by a Deed of Trust in favor
15 of Greenlight Financial Services, Inc., recorded with the Maricopa County Recorder as
16 document no. 2006-0206049 and later transferred to NY Mellon based on the assignment
17 recorded as document no. 2015-0714169 on October 5, 2015.
18

19 The Property currently has a fair market value of no more than \$265,700 based on a
20 recent valuation provided by Opendoor in the form of an estimated offer. As the amount of
21 Ditech’s first position lien exceeds the value of the Property, there is not enough equity in
22
23
24
25
26
27
28

1 the Property to secure any portion of the second position lien of The Bank of New York
2 Mellon.

3
4 THE COURT having considered the Motion, and with proper notice of the Motion
5 upon The Bank of New York Mellon and interested parties, pursuant to Rule 7004 of the
6 Federal Rules of Bankruptcy Procedure, with no objection having been received by The
7 Bank of New York Mellon, and good cause appearing therefor;

8
9 **IT IS HEREBY ORDERED:**

10 A. No equity exists in the Property for the benefit of The Bank of New York
11 Mellon; The Bank of New York Mellon does not have a secured claim, and its lien may not
12 be enforced, pursuant to 11 U.S.C. § 506, provided that the Chapter 11 case is completed
13 and the Debtors receive a discharge;

14 B. The entire claim of The Bank of New York Mellon shall be classified as a
15 general unsecured claim and paid as such under the Debtor's Chapter 11 Plan;

16 C. This Order shall become part of the Debtors' Chapter 11 Plan and
17 incorporated into the confirmation order;

18 D. Upon entry of discharge in the Debtors' Chapter 11 case, The Bank of New
19 York Mellon shall provide a release of its junior mortgage lien in the Property within thirty
20 (30) days of the date of the discharge order;

21 E. In the event The Bank of New York Mellon fails to release its second
22 mortgage lien within 30 days of the date of discharge, the Debtors may record this Order
23 with the Maricopa County Recorder and such recording shall result in the release of The
24 Bank of New York Mellon's lien;
25
26
27
28

1 F. The Bank of New York Mellon's second-position lien shall remain in place
2 and the full amount of the debt shall remain secured should the Debtors' case be dismissed
3 or converted to Chapter 7.

4 G. Except as provided by a separate, subsequent order of this Court, the lien of
5 The Bank of New York Mellon may not be enforced so long as this Order remains in effect.
6

7 **DATED AND SIGNED ABOVE.**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28